

Supreme Court, U. S.
F I L E D

MAR 1 1979

MICHAEL ROBAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-303

WILLIAM E. COLBY
AND VERNON A. WALTERS,

Petitioners,

v.

RODNEY D. DRIVER, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR CERTIORARI FILED August 22, 1978
CERTIORARI GRANTED January 15, 1979

IN THE
Supreme Court of the United States
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The following opinions, decisions, judgments and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

	PAGE
Opinion of the Court of Appeals for the First Circuit, dated May 25, 1978	1a
Opinion of the District Court for the District of Rhode Island, dated April 1, 1977	21a
Order of the District Court for the District of Rhode Island, entered October 4, 1977	70a
Judgment of the Court of Appeals for the First Circuit, entered May 25, 1978	72a

LIST OF RELEVANT DOCKET ENTRIES

1975

July 22	Complaint filed
August 26	Motion of United States of America to Intervene as Party-Defendant filed
September 12	Plaintiff's Amended Complaint-Class Action for Declaratory and Injunctive Relief and Money Damages filed
September 26	Order that the Motion of the United States of America to Intervene as a Party-Defendant is granted, entered and filed
November 7	Motion of Defendant McGeorge Bundy to Dismiss the Amended Complaint filed
December 31	Motion of Defendant James Edward Day to Dismiss the Amended Complaint filed

1976

February 5	Notice of motion filed, and certificate of service filed
February 5	Motion of Defendant Patrick Gray to Dismiss Amended Complaint filed
February 5	Motion of Winton Blount to Dismiss Amended Complaint filed
February 5	Motion to Dismiss by Carter, Day and Watson filed
February 5	Affidavit of Richard Helms filed
February 5	Motion of Helms to quash service filed
February 5	Motion of Meyer to Dismiss Amended Complaint filed
February 5	Motion of Bissell to Dismiss Amended Complaint filed
February 5	Motion of Raborn to Dismiss Amended Complaint filed

February 5 Motion of Taylor to Dismiss Amended Complaint filed

February 9 Affidavit of William E. Colby filed (d)

February 9 Affidavit of Vernon A. Walters filed (d)

February 10 Motion of Defendant, Howard J. Osborn, to Dismiss the Amended Complaint filed

March 19 Motion of Defendant, Thomas Karamessines, to Dismiss Amended Complaint filed

March 19 Motion of Defendant, James R. Murphy, to Dismiss Amended Complaint filed

April 20 Motion of Defendant William J. Hood to Dismiss Amended Complaint filed

April 26 Motion of Defendants James J. Angleton and Raymond Rocca to Dismiss Amended Complaint filed

September 21 Defendant Elmer T. Klassen's Motion to Dismiss Amended Complaint filed

November 10 Defendant Lawrence F. O'Brien's Motion to Dismiss Amended Complaint filed

1977

April 6 Opinion re: Denied Jurisdictional Motions to Dismiss; Granted Class Action in Part and Denies Class Actions in Part, entered and filed

October 4 Order re: Motions of each and every defendant other than Clarence Kelley and the U.S. to dismiss the Amended Complaint and the U.S. is granted the opportunity to apply to the U.S. Court of Appeals within 10 days from the entry of this order for permission to appeal; that motion of Defendant Clarence Kelley to Dismiss the Amended Complaint is moot and is denied, entered and filed

November 3 Notice of Appeal filed

November 3 Memorandum of the U.S. in Opposition to Class Certification filed.

November 4 Memorandum of Deft Richard Helms in Opposition to Plaintiffs' Motion for Leave to Take Deposition and in further support of Defendant Helms' Motion to Quash Service and Return filed.

November 6 Clerk's Certificate filed.

November 8 Record on appeal.

November 8 Hearing on sub-classes of Opinion of April 1, 1977.

November 14 Return receipt of record on appeal. filed.

December 2 Stipulation re: That defendant Mitchell will answer, move, or otherwise plead with respect to the Amended Complaint within 30 days of the receipt of the Court of Appeals decision by defendant Mitchell's counsel entered and filed.

December 15 Opinion Re: Certification for Appeal filed.

December 15 Supplemental record sent to Court of Appeals.

December 18 Summons returned, duly served and filed.

1978

May 31 Mandate from the First Circuit - District Court Decision is affirmed in part and remanded.

July 20

Stipulation re: defendantt Mitchell will answer, move or otherwise plead with respect to the amended complaint within 30 days of receipt by defendant Mitchell's counsel of notice of the final disposition of this appeal by the Supreme Court of the U.S. entered and filed.

September 11

Memo and Order re: The claims for money damages against the U.S. are hereby dismissed because barred by the doctrine of sovereign immunity.

United States District Court

DICTRICT OF RHODE ISLAND

RODNEY DRIVER, MICHAEL AVERY,
B. LEONARD AVERY, VICTORIA
WILSON, JULIA SIEBEL, and all
other persons similarly
situated,

Plaintiff,

v.

RICHARD HELMS, *et al.*,
Defendants.

Civil Action No. 75-0224
Amended Complaint-Class
Action for Declaratory and
Injunctive Relief and Money
Damages

Plaintiffs, by their attorneys, allege:

JURISDICTION

1. This is a civil action for declaratory and injunctive relief and money damages, arising under the First, Fourth, Fifth and Ninth Amendments to the Constitution, Title 18, United States Code, Sections 1701, 1702, 1703, 1708 and 1709, and Title 42, United States Code, Section 1985(3). The jurisdiction of this Court rests on Title 28, United States Code, Section 702.

2. The matter in controversy, exclusive of interest and costs, exceeds \$10,000.

3. Plaintiff RODNEY DAVID DRIVER is a citizen of the United States and a resident of the State of Rhode Island. He is a Professor of Mathematics at the University of Rhode Island. He is a Professor of Mathematics at the University of Rhode Island and has had occasion to correspond with fellow mathematicians in the Soviet Union on subjects of mutual interest.

4. Plaintiff MICHAEL AVERY is a citizen of the United States and a resident of the State of Connecticut. He is an attorney. During a year he spent in the Soviet Union as an exchange student, he corresponded with members of

21. Defendant JAMES J. ANGLETON was, at times material to this complaint, Chief of the Counterintelligence Staff of the Central Intelligence Agency.

22. Defendant WILLIAM HOOD was, at times material to this complaint, Deputy Chief of the Counterintelligence Staff of the Central Intelligence Agency.

23. Defendant RAY ROCCA was, at times material to this complaint, Assistant to the Chief of the Counterintelligence Staff of the Central Intelligence Agency.

24. Defendant RICHARD OBER was, at times material to this complaint, in charge of a domestic surveillance operation of the Counterintelligence Staff of the Central Intelligence Agency designated as CHAOS.

25. Defendant HOWARD OSBORN was, at times material to this complaint, Director of Security in the Central Intelligence Agency.

26. Defendant JAMES MURPHY was, at times material to this complaint, Director of the Office of Operations in the Central Intelligence Agency.

27. Defendant JAMES EDWARD DAY was Postmaster General of the United States Post Office Department from 1961 to 1963.

28. Defendant JOHN A. GRONOUSKI was Postmaster General of the United States Post Office Department from 1963 to 1965.

29. Defendant LAWRENCE F. O'BRIEN was Postmaster General of the United States Post Office Department from 1965 to 1968.

30. Defendant WILLIAM MARVIN WATSON was Postmaster General of the United States Post Office Department from 1968 to 1969.

31. Defendant WINTON M. BLOUNT was Postmaster General of the United States Post Office Department from 1969 to 1971.

32. Defendant ELMER T. KLASSEN was Postmaster General of the United States Postal Service from 1972 to 1975.

33. Defendant WILLIAM J. COTTER has been Assistant Postmaster General, Inspection Service, United States Postal Service since 1971, and was Chief Postal Inspector of the United States Post Office Department from 1969 to 1971.

34. Defendant CLARENCE M. KELLEY is Director of the Federal Bureau of Investigation.

35. Defendant LOUIS PATRICK GRAY III was Director of the Federal Bureau of Investigation from 1972 to 1973.

36. Defendant JOHN N. MITCHELL was the Attorney General of the United States from 1969 to 1972.

37. Defendant McGEORGE BUNDY was Special Assistant to the President for National Security Affairs from 1961 to 1966.

38. Defendants JOHN DOE, RICHARD ROE, DAVID POE are unknown past and present employees of the United States Government, and presently unknown individuals not employed by the United States Government, who conspired or acted in concert with the named defendants in the conduct of the activities described below.

39. Each of the defendants is sued in his individual and official, or former official, capacities, with the exception of defendant Kelley, who is sued solely in his official capacity.

CLASS ACTION ALLEGATIONS

40. This suit is brought as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, and is maintainable under Rule 23(b)(1)(A), 23(b)(2) and 23(b)(3).

41. The named plaintiffs represent the class of all United States citizens and residents whose first-class letters, written and sent by or to them, either from within or destined for the United States, were unlawfully opened, read and photographed by employees of the Central Intelligence Agency, acting in concert with employees of the United States Post Office Department, the United States Postal Service, the Federal Bureau of Investigation, the Department of Justice, and other government agencies resulting in the unlawful collection, maintenance and dissemination of files relating to them.

42. The class is so numerous as to make joinder of all members impossible. The total number and identity of class members is known only to the Central Intelligence Agency, but plaintiffs estimate on information and belief, that the class they represent numbers in the tens of thousands.

43. The common questions of law and fact affecting all members of the class predominate over any questions affecting only individual members to such a degree that a class action is the only method available for the fair and efficient adjudication of this controversy. The prosecution of separate claims by the members of the class would constitute an undue burden on the vindication of their rights, create the risk of inconsistent or varying adjudications, and establish incompatible standards for the defendants' conduct.

44. The claims of the representative parties have the same legal and factual basis as the claims of the members of

the class, the defendants have acted on identical grounds with respect to all members of the class, common relief is sought, and plaintiffs will fairly and adequately protect the interests of the class.

FACTS

45. Present employees of the Central Intelligence Agency informed plaintiff Driver, by letter dated May 21, 1975, that on one occasion in 1965 and on two occasions in 1969, first-class letters addressed to the Soviet Union, which were written, sealed and deposited by plaintiff in the United States mails were surreptitiously opened, read and photographed by employees of the Central Intelligence Agency prior to delivery to the addresses. Copies of the photographed letters were given to plaintiff Driver by said present employees and are in his possession.

46. Present employees of the Central Intelligence Agency informed plaintiff Michael Avery, by letter dated June 11, 1975, that on one occasion in 1968, on three occasions in 1969, and on two occasions in 1970, first-class letters written by or to plaintiff Michael Avery were surreptitiously opened, read and photographed by employees of the Central Intelligence Agency prior to delivery to the addresses. Copies of the photographed letters were given to plaintiff Avery by said present employees and are in his possession.

47. Plaintiff B. Leonard Avery was the recipient in 1968 of a first-class letter from his son, plaintiff Michael Avery, which present employees of the Central Intelligence Agency have informed plaintiff Michael Avery, by letter dated June 11, 1975, was surreptitiously opened, read and photographed by employees of the Central Intelligence Agency prior to delivery to the address. A copy of the letter was given to plaintiff Michael Avery by said

present employees of the Central Intelligence Agency and is in his possession.

48. Present employees of the Central Intelligence Agency informed plaintiff Wilson, by letter dated June 6, 1975, that on 12 occasions, from 1959 to 1964, first-class letters exchanged between plaintiff Wilson and her father were surreptitiously opened, read and photographed by employees of the Central Intelligence Agency prior to delivery to the addressees. Copies of the photographed letters were given to plaintiff Wilson by said present employees and are in her possession.

49. Present employees of the Central Intelligence Agency informed plaintiff Siebel, by letter dated May 21, 1975 that on one occasion in 1960, on one occasion in 1961, and on one occasion in 1962, first-class letters sent by or to plaintiff Siebel were surreptitiously opened, read and photographed by employees of the Central Intelligence Agency prior to delivery to the addressees. Copies of the photographed letters were given to plaintiff Siebel by said present employees and are in her possession.

50. On information and belief, first-class letters other than those identified in the preceeding paragraphs which were written and sent by or to each of the plaintiffs, either from within or destined for the United States, were similarly opened, read and photographed by present and past employees of the Central Intelligence Agency.

51. At no time had any of the plaintiffs had any connection or association with, applied for employment with, or sought any benefit of any kind from the Central Intelligence Agency.

52. At no time did the defendants have the authority of a warrant issued by a federal judicial officer to search and seize plaintiffs' sealed first-class letters nor did defendants

ever have lawful authority to search and seize plaintiffs' sealed first-class letters without a warrant.

53. On information and belief, the Central Intelligence Agency conducted a massive, covert, illegal and unconstitutional operation throughout the United States, but concentrated principally in New York City, surreptitiously to intercept, open, read and photograph the contents of sealed first-class letters deposited in the United States mails by United States residents. This illegal and unconstitutional activity was conducted for an extended period of time, the length of which is not known to plaintiffs, but which includes the period from February 1953 to February 1973.

54. On information and belief, during the period described in the preceeding paragraph, the defendants engaged in an extended conspiracy to conduct an illegal and unconstitutional program surreptitiously to intercept, open, read and photograph tens of thousands of sealed first-class letters deposited in the United States mails by plaintiffs and the members of their class.

55. On information and belief, from 1953 to the present, the defendants engaged in an extended conspiracy to conduct an illegal and unconstitutional program to collect and maintain files concerning the plaintiffs, members of their class, and to disseminate the contents of those files to other agencies of the United States Government, to employees of the United States outside the Central Intelligence Agency, and to persons not employed by the United States.

56. On information and belief, defendants engaged in an extended conspiracy unlawfully to conceal the acts complained of in paragraphs 45 through 55 from plaintiffs and other members of their class, and from the public.

57. On information and belief, each of the defendants knew of, participated in, and/or concealed the illegal and

unconstitutional activities described in paragraphs 45 through 55.

58. On information and belief, the Central Intelligence Agency continues to maintain and disseminate files containing the information illegally and unconstitutionally culled from the private communications of plaintiffs and the members of their class as described above.

CAUSES OF ACTION

59. The actions of the defendants in intercepting, opening, reading, photographing and circulating the sealed, first-class letters deposited in the United States mails by plaintiffs and the members of their class are unconstitutional and illegal for the following reasons:

(1) they violated the rights of plaintiffs and the members of their class to privacy and security from unreasonable searches and seizures as guaranteed by the Fourth Amendment of the Constitution;

(2) they violated plaintiffs' and the class members' right to privacy as guaranteed by the First, Fourth, Fifth and Ninth Amendments to the Constitution;

(3) they violated the right of free speech guaranteed to plaintiffs and the members of their class by the First Amendment to the Constitution;

(4) they violated Title 18, United States Code, Sections 1701, 1702, 1703, 1708 and 1709, prohibiting the above-described interference with the United States mails;

(5) they violated Title 42, United States Code, Section 1985(3), by conspiring to deprive plaintiffs and the members of their class of their rights and privileges the members of their class of

their rights and privileges under the First, Fourth, Fifth and Ninth Amendments to the Constitution.

WHEREFORE, plaintiffs request that the Court grant the following relief:

A. A declaratory judgment that the course of conduct and activities of the defendants set forth above were and are illegal and unconstitutional;

B. Preliminary and permanent injunctions enjoining the defendants from engaging in the activities declared to be illegal and unconstitutional;

C. A mandatory injunction or writ of mandamus ordering the defendants to produce before this Court, for destruction, all files, reports, records, photographs, data computer tapes and cards, and all other materials derived from defendants' illegal and unconstitutional activities relating to plaintiffs and all other persons similarly situated;

D. Judgment in the amount of \$20,000 compensatory damages for the opening and reading of each letter belonging to plaintiffs and each member of the class;

E. Recovery in the amount of \$100,000 punitive damages for the willful violation of constitutional rights for each plaintiff and for each member of their class;

F. The reasonable costs of this action and attorneys' fees of plaintiffs;

G. Such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

(Signatures Omitted);

(Caption Omitted)

NOTICE OF MOTION

Defendants Schlesinger, Colby, Cushman and Walters move to dismiss this action under rule 12(b)(2) for lack of personal jurisdiction over them, and under rule 12(b)(3) for improper venue on the grounds set forth in the accompanying memorandum, and on the facts set forth in the accompanying affidavits of each of the above defendants.

/s/_____

(Caption Omitted)

AFFIDAVIT OF WILLIAM E. COLBY

WILLIAM E. COLBY, being duly sworn, says:

1. This affidavit is submitted in support of my motion to dismiss the amended complaint herein as against me for lack of personal jurisdiction and insufficiency of service of process.

2. I was Director of Central Intelligence from September 4, 1973 to January 27, 1976. Prior to that, from March 1973 to August, 1973 I was Deputy Director for Operations of the Central Intelligence Agency.

3. I am not, nor have I at any time been, a domiciliary, resident or citizen of the State of Rhode Island. I have not carried on or engaged in any personal business in the State of Rhode Island. I do not own property located in the State of Rhode Island.

4. In my official capacity, or otherwise, I have neither authorized nor taken part in any action in the State of Rhode Island in any manner related to the acts complained of in this action (mail intercept, maintenance of files or dissemination of intercepted mail). In addition, I am not aware of any acts complained of in this action by any employee or official of the Central Intelligence Agency or any other person which took place in the State of Rhode Island.

5. The only service of the summons and complaint in this action made upon me was by service upon John K. Greaney, Esquire, Associate Counsel of the Central Intelligence Agency, in Langley, Virginia.

/s/_____

[Jurat]

(Caption Omitted)

AFFIDAVIT OF VERNON A. WALTERS

VERNON A. WALTERS, being duly sworn, says:

1. This affidavit is submitted in support of my motion to dismiss the amended complaint herein as against me for lack of personal jurisdiction and insufficiency of service of process.

2. I am and have been Deputy Director of Central Intelligence since May, 1972.

3. I am not, nor have I at any time been, a domiciliary, resident or citizen of the State of Rhode Island. I have not carried on or engaged in any personal business in the State of Rhode Island. I do not own property located in the State of Rhode Island.

4. In my official capacity as Deputy Director of Central Intelligence, or otherwise, I have neither authorized nor taken part in any act in the State of Rhode Island in any manner related to the acts complained of in this action (mail intercept, maintenance of files or dissemination of intercepted mail). In addition, I am not aware of any acts complained of in this action by any employee or official of the Central Intelligence Agency or any other person which took place in the State of Rhode Island. In fact, I first learned of the mail intercept programs complained of in plaintiffs' amended complaint only after they were terminated.

5. The only service of the summons and complaint in this action made upon me was in the State of Virginia.

/s/_____

[Jurat]